

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, JULY 19, 2006**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of July 19, 2006, was called to order by Mayor Hitchcock at 5:35 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and Interim City Clerk Perrin

C-2 ANNOUNCEMENT OF CLOSED SESSION

- a) Conference with Blair King, City Manager, and Jim Krueger, Deputy City Manager (Acting Labor Negotiators), regarding Association of Lodi City Employees (General Services and Maintenance and Operators), pursuant to Government Code §54957.6
- b) Actual Litigation: Government Code §54956.9(a); one case; County of San Joaquin v. City of Stockton et al., San Joaquin County Superior Court, Case No. CV029651
- c) Actual Litigation: Government Code §54956.9(a); one case; People of the State of California; and the City of Lodi, California v. M & P Investments, et al., United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- d) Actual litigation: Government Code §54956.9; one application; Parry Ray v. City of Lodi; WCAB Case Number STK176332 – 10/08/01

C-3 ADJOURN TO CLOSED SESSION

At 5:35 p.m., Mayor Hitchcock adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:46 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:03 p.m., Mayor Hitchcock reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

Items C-2 (a) and (c) were not discussed.

In regard to Item C-2 (b), direction was given to staff.

In regard to Item C-2 (d), settlement authority was given to staff.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of July 19, 2006, was called to order by Mayor Hitchcock at 7:03 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and Interim City Clerk Perrin

B. INVOCATION

The invocation was given by Pastor Dale Edwards, Century Assembly Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 (a) Mayor Hitchcock presented a proclamation to Police Chief Adams and Crime Prevention Officer Andrea Patterson proclaiming Tuesday, August 1, 2006, as "National Night Out 2006" in the City of Lodi. Officer Patterson announced that there are currently 88 registered block parties and that this year's theme is in celebration of the City's Centennial.

D-3 (a) Council Member Mounce presented a Resolution of Appreciation to Candace Groomes representing Landmark Innovative Industries for its generous donation of services to design and prepare the "In God We Trust" plaque. Ms. Mounce invited the public to view the plaque, which was displayed in the Carnegie Forum lobby.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Beckman, Mounce second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

E-1 Claims were approved in the amount of \$2,357,889.30.

E-2 The minutes of June 6, 2006 (Shirtsleeve Session), June 7, 2006 (Regular Meeting), July 4, 2006 (Shirtsleeve Session), and July 11, 2006 (Shirtsleeve Session) were approved as written.

E-3 "Authorize sale of asphalt grindings as surplus property during calendar year 2006" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**

E-4 "Accept donation of artwork from winner of the community art painting at the Lodi Arts Commission Art on the Square" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**

E-5 "Adopt resolution authorizing the City Manager to execute Contract Change Order for the Elm Street Paving Stone Replacement Project, School Street to Sacramento Street, and appropriating funds (\$45,000)" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**

E-6 Adopted Resolution No. 2006-134 approving renewal of existing downtown parking lot cleaning contract and Resolution No. 2006-135 approving renewal of existing Hutchins Street Square landscape maintenance contract with United Cerebral Palsy of San Joaquin and Amador Counties, of Stockton, for fiscal year 2006-07 in the amount of \$59,840.

E-7 "Adopt resolution authorizing the City Manager to execute contract with San Joaquin County Sheriff's Office for Alternative Work Program for general maintenance within the City Parks and Recreation Facilities and Public Works Street Division" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**

E-8 Adopted Resolution No. 2006-136 authorizing the City Manager to execute the service/maintenance agreement for the police computerized information systems with Data 911 and authorizing payment in the amount of \$80,000 using funds as appropriated in the 2006-07 police department operating budget.

- E-9 Adopted Resolution No. 2006-137 authorizing the City Manager to execute agreement forms with the Bureau of Justice Assistance accepting grant funding in the amount of \$23,355 to support technology program activities within the Lodi Police Department.
- E-10 Adopted Resolution No. 2006-138 setting priorities for filing written arguments regarding the Low-Income Discounts for Water and Sewer Services measure scheduled for the November 7, 2006, General Municipal Election and directing the City Attorney to prepare an impartial analysis.
- E-11 Authorized funds in the amount of \$2,600 from the Protocol Account for the City Council to host a reception honoring members of Council-appointed boards, commissions, committees, and task force groups.
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ACTION ON ITEMS REMOVED FROM THE CONSENT CALENDAR

- E-3 "Authorize sale of asphalt grindings as surplus property during calendar year 2006"

PUBLIC COMMENTS:

- Ted DeLong, representing the Tokay Radio Control Model Club, stated the club hopes to use this material to finish the runway at its new site and he urged Council to approve this request.

MOTION / VOTE:

The City Council, on motion of Council Member Beckman, Hansen second, unanimously authorized the sale of asphalt grindings as surplus property during calendar year 2006.

- E-4 "Accept donation of artwork from winner of the community art painting at the Lodi Arts Commission Art on the Square"

Council Member Mounce suggested that the young man be invited to a Council meeting to receive recognition for his donation, to which Mayor Hitchcock responded that, assuming the donation is approved by Council, it would be scheduled for the next regular meeting.

MOTION / VOTE:

The City Council, on motion of Council Member Mounce, Beckman second, unanimously accepted donation of artwork from winner of the community art painting at the Lodi Arts Commission Art on the Square.

- E-5 "Adopt resolution authorizing the City Manager to execute Contract Change Order for the Elm Street Paving Stone Replacement Project, School Street to Sacramento Street, and appropriating funds (\$45,000)"

Wally Sandelin, City Engineer, reported that the change order addresses work that is maintenance oriented on School Street to address separation between the bricks. The contractor for the Elm Street project pointed out that there should be annual maintenance, and this contract change order would address that.

Mr. King stated that the original project was the replacement of the work on Elm Street between School and Sacramento Streets, and this change order would take advantage of the bid price to do similar work on School Street.

In response to Council Member Hansen, Mr. Sandelin stated that staff is satisfied that the work has been completed according to specification. The contractor will come back to address the gaping between some of the bricks. In regard to a guarantee, staff believes it has arrived at a long-term solution to address this problem, which was primarily related to poor compaction under the pavers before being set.

MOTION:

Council Member Hansen made a motion, Hitchcock second, to adopt Resolution No. 2006-139 authorizing the City Manager to execute Contract Change Order for the Elm Street Paving Stone Replacement Project, School Street to Sacramento Street, to perform additional downtown street paving stone maintenance activities and appropriating an additional \$45,000 in Proposition 42 Transportation Improvement Act funds.

DISCUSSION:

In response to Mayor Hitchcock, Mr. Sandelin replied that staff was initially led to believe that the pavers were relatively maintenance free; however, that was not the case, and gaps occur as traffic wears on the pavers and moisture occurs underneath the pavement if the surface is not sealed properly. The Public Works Street Division would address these issues as part of its annual maintenance.

Mayor Pro Tempore Johnson questioned why the cost of this project is so high as compared to the entire Elm Street project, to which Mr. Sandelin responded that there is a dollar per square foot comparison between the two contracts.

In response to Mr. Johnson as to whether this project should have been re-bid if it was not part of the original work, Mr. King stated that Public Works believed that the per unit price for the work was a competitive price. On a square foot basis, this should be the same cost, and he believed there was no prohibition on the change order dollar amount.

Mr. Sandelin responded to Mr. Johnson that typically there is a one-year warranty on the work performed by general contractors.

In response to Council Member Mounce, Mr. Sandelin stated that the locations of the maintenance activities are spread out along School Street and staff will coordinate with the Farmers Market and other downtown events. Staff hopes to complete the work before the rainy season.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Mounce, and Mayor Hitchcock

Noes: Council Members – Johnson

Absent: Council Members – None

- E-7 “Adopt resolution authorizing the City Manager to execute contract with San Joaquin County Sheriff’s Office for Alternative Work Program for general maintenance within the City Parks and Recreation Facilities and Public Works Street Division”

Council Member Hansen questioned who would be responsible for supervising the inmates that would be participating in this program and working in the City parks, to which George Bradley, Street Superintendent, responded that the supervision is entirely upon City staff and that the County Sheriff’s office would provide training. Mr. Hansen requested information on the history of workers compensation injuries and other such problems.

Sergeant Chris Stevens, administrator of the San Joaquin County Sheriff’s Alternative Work Program (AWP), clarified that those enrolled in the AWP are not inmates at the county jail; they are people who are providing community service in lieu of being incarcerated in the county jail. These are petty offenders, drunk drivers, and those charged with petty theft and minor drug charges. For every eight hour day that they work for a municipality or a 501c3 organization in the county, they receive credit for two days time served in jail. The average sentence is 30 days or less. In regard to the number of workers compensation claims, he stated that out of 70 sites in the county, four claims have been filed over the last two years and the majority was for a bona fide injury. The City of Lodi has set boundaries on who it will not accept in the program.

MOTION:

Council Member Hansen made a motion, Mounce second, to adopt Resolution No. 2006-140 authorizing the City Manager to execute a contract with the San Joaquin County Sheriff's Office for Alternative Work Program for general maintenance within the City Parks and Recreation Facilities and Public Works Street Division for the period July 1, 2006 through June 30, 2007.

DISCUSSION:

Mayor Pro Tempore Johnson added for the public's information that the contract states no persons convicted of sex offenses, weapons crimes in the last two years, drug offenses in the last ten years, child or spousal abuse, crimes of violence, or workers compensation fraud would be participating in this program. He expressed support for this program and was pleased to see that it is a joint venture of Parks and Recreation and Public Works.

PUBLIC COMMENTS:

- Mary Fonte believed this was a good program; however, she questioned if any employees would be laid off because of it and how much the program would cost.

Mayor Hitchcock confirmed that no employees would be laid off as a result of this contract; however, it would help with maintenance that the City is otherwise unable to perform due to budget constraints.

Mr. King added that the program is self supporting and that the participants pay for the costs involved. The only exposure is the workers compensation issue as the City is responsible for controlling and directing the workers; therefore, the contract includes language to address this issue should it become a problem.

VOTE:

The above motion carried by a unanimous vote.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Phil Pennino announced that the Lodi Salvation will be ringing the bell for its Christmas in July campaign and he encouraged people to volunteer for or donate toward the program. Bell ringers will be at Albertson's Apple Market, the post office, and in front of the movie theater. Mr. Pennino introduced Lieutenants Dan and Kim Williams who have taken over the leadership role at the Lodi Salvation Army. Lieutenant Dan has expertise in organization and financial management, and Lieutenant Kim brings expertise in running a shelter for men, women, and children.
- Lieutenant Dan and Kim Williams both expressed their excitement about locating in Lodi and in serving this community.

G. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Hansen reported that he recently attended the American Public Power Association Policy Makers Council in Washington D.C., which is a group of individuals who advocate on behalf of public power. Each state has two to three representatives, and he is one of three from the State of California. During this meeting, members met with congressional representatives to discuss issues from a nationwide perspective, which included: monopolies by railroad companies that do not provide competitive bids for delivery of coal; climate change; municipal broadband involvement and telecommunications; Clean Energy Renewal Bond; and security costs, which is a new federal requirement post 9/11 that would establish a cost in protecting major hydro power plants from terrorist acts. It is evident that there will be additional costs to cities, and the members are attempting to introduce legislation that would place a cap on the costs in order for cities to budget appropriately. He reported that, if re-elected to

Council, he would not serve another term on the Policy Makers Council due to the demanding commitment, and he gave notice that he would not seek re-appointment to another four-year term.

- Council Member Mounce reported that next week she would be attending the League of California Cities Council Members Academy and Executive Forum. Highlights of the conference include youth commissions; information technology; water supplies and how they affect California; telecommunications; ethics training as required by law; financing for municipalities; and development in flood plains. She also reported that, on her own expense, she would be representing the City at the celebration of the National motto, which will be held at the conference center in Bakersfield. The event will highlight the 19 cities that have displayed the National motto, "In God We Trust."
- In response to Mayor Pro Tempore Johnson, Mr. Hansen confirmed that the security fee would be applicable to both municipal-owned and investor-owned utilities.

H. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- Mr. King stated that the City of Lodi and the Boosters of Boys and Girls Sports Organization are hosting the Central California Babe Ruth Baseball Tournament for boys between the ages of 13 and 15 at Zupo Field this weekend. They are short of housing and are looking for host families. He encouraged anyone wanting to participate to call the Parks and Recreation Department at 333-6742.

I. PUBLIC HEARINGS

None.

J. COMMUNICATIONS

J-1 On recommendation of the City's contract administrator and Human Resources staff, the City Council, on motion of Council Member Hansen, Johnson second, unanimously rejected the following claims:

- a) Amber L. Novak, date of loss 5/19/06
- b) Bethsaida Bahena, date of loss 12/14/05
- c) Janis Southard, date of loss 6/14/06

J-2 The following postings/appointments were made:

- a) "Appointments to the Greater Lodi Area Youth Commission (Adult Advisors), Library Board of Trustees, Lodi Arts Commission, and Lodi Planning Commission"

Council Member Beckman stated that he would not support the appointment of Tim Mattheis to the Planning Commission due to his poor attendance at meetings throughout his previous service on the Commission. Current Commissioner, Dennis Haugan, has an exceptional attendance record, has attended extra-curricular study and planning sessions, and has done an outstanding job as a Commissioner in studying and preparing for the issues.

Mayor Hitchcock responded that Mr. Mattheis has attended Planners Institutes, has many years of experience in these matters, and is extremely knowledgeable and well-versed in the Lodi General Plan, which is a major issue about to be undertaken. She has spoken with Mr. Mattheis regarding his attendance, and he has guaranteed that he would attend every session. She believed him to be a professional and that he would do an outstanding job as a Commissioner.

Council Member Hansen pointed out that as mayor one of the few privileges is the ability to interview and recommend appointments to City boards and commission and for that reason he would support the recommendation.

Mayor Pro Tempore Johnson agreed that Mr. Mattheis' attendance was a concern and he hoped it would not be repeated.

MOTION #1 / VOTE:

The City Council, on motion of Council Member Mounce, Hansen second, made the following appointment by the vote shown below:

Ayes: Council Members – Hansen, Johnson, Mounce, and Mayor Hitchcock

Noes: Council Members – Beckman

Absent: Council Members – None

Lodi Planning Commission

Tim Mattheis Term to expire June 30, 2010

MOTION #2 / VOTE:

The City Council, on motion of Council Member Mounce, Hansen second, unanimously made the following appointments:

Greater Lodi Area Youth Commission

Adult Advisors:

Elizabeth Mazzeo Term to expire May 31, 2009

Summer Pennino Term to expire May 31, 2009

Jeffrey Palmquist Term to expire May 31, 2009

Library Board of Trustees

Suga Moriwaki Term to expire June 30, 2009

Paula Albertson Term to expire June 30, 2009

Lodi Arts Commission

Jennifer Walth Term to expire July 1, 2009

J-3 Miscellaneous

- a) Interim City Clerk Perrin presented the cumulative Monthly Protocol Account Report through June 30, 2006.

K. REGULAR CALENDAR

- K-1 "Adopt resolution affirming July 1 opening and October 1 closing date for filing applications for residential allocations under the Lodi Growth Management Ordinance and direct staff to work with the development community to establish a new timeline for Council approval of various elements of development approvals"

City Attorney Schwabauer reported that new staff in Community Development recently discovered that the growth management allocation process was not being followed in accordance with Council adopted policy. Resolution 91-171 states that growth management allocation requests must be filed July 1 through October 1. Other deadlines set forth in the resolution include: November 1 – California Environmental Quality Act determination of completeness; December 1 – initial study; March 1 – draft Environmental Impact Report (EIR); April 15 – EIR comment period; and May 1 – final EIR. These dates were adopted at a time when Lodi did not prepare an EIR for housing developments because many were 40 to 100 units; however, most current developments are closer to 2,000 units and require an EIR.

Mr. King stated that past practice is that City staff has accepted May 31 as the deadline date for the submission of growth management allocations, which has been occurring for a number of years and is believed to be the correct date by the development community.

There is a reference to the May 31 date in the housing element; however, he did not believe that Council intended to change the date adopted in Resolution 91-171. Staff determined that no applications would be accepted until Council determined whether to follow past practice of accepting them until May 31 or to follow the adopted policy and accept them from July 1 to October 1. Many members of the development community have submitted applications in anticipation of meeting the traditional May 31 deadline. Mr. King highlighted the following three options:

- Option 1. Reaffirm the July 1 to October 1 deadline with the window of time open now to receive growth management allocation applications;
- Option 2. Direct staff to follow past practice, establish the May 31 deadline, and begin processing the applications that have been received; or
- Option 3. Establish a hybrid of setting forth the deadline of May 31, holding onto and not processing the applications that have been received until the October 1 deadline, but not accepting further applications.

Mr. King has discussed the hybrid theory with the development community, which seems to support the concept. The delay in processing the applications until October would take a burden off of staff in terms of the workload. He suggested that staff return to Council with revisions to the schedule of dates set forth in the resolution as they are no longer realistic. The May 31 date was a collaboration of the Community Development Department and the development community to allow processing to occur within a reasonable schedule; however, it was not brought to Council for codification.

Council Member Mounce questioned what the consequences were for the three options, to which Mr. King replied that under Option 1 the applications would be returned as they were filed prior to the deadline and he believed that most would resubmit during the filing period of July 1 through October 1. This would also give an opportunity for those who had not already submitted an application to do so. Under Option 2, staff would begin processing the applications; however, someone who was aware of the resolution filing dates could complain that they were denied an opportunity this year to apply for a growth allocation. The same would hold true for the hybrid idea, Option 3.

PUBLIC COMMENTS:

- Jeffrey Kirst, Tokay Development, stated that it has been public knowledge promoted by staff for many years that the last date to file is May 31 and everyone in the development community who knows this has filed their applications. Former Community Development staff worked with the development community to formulate a schedule that worked best in order for these projects to begin in April after the rain stopped. Due to this competitive process, he believed that the hybrid Option 3 was acceptable, which would also relieve the burden of an overloaded staff by postponing the processing of the applications.
- Kathy Haring stated that she and her husband are developing a small project in order to supplement their income and that delaying this to October would financially ruin them. All of the information that she could find and that staff provided pointed to the May 31 filing deadline, and she believed it was unfair to change the rules. She added that the growth management ordinance is very daunting on a small developer as her six condominium infill project is grouped together with the large developments, some of which require annexation. The housing element states that priority will be given to projects that do not impact resources greatly; however, she felt that the larger projects, which bring in higher sales and property tax revenues, receive greater attention and focus. She believed that the process was not competitive as the allocations have never been exhausted and have been carried over from year to year.

In response to Council Member Hansen, Mr. Hatch explained that Ms. Haring's project would not require an EIR as it qualifies under a categorical exemption as an infill

project; however, most of the seven projects that have been submitted require environmental work and/or an EIR. Under the growth management allocation process, the projects are rated against each other and must go through the process together. Ms. Haring's project would be simple, but the others could take six to nine months until the allocations are awarded. He pointed out that processing the applications now, versus October, would affect several on-going projects including the greenbelt efforts, general plan update, pending development agreements, Delta College, and the community facilities district proposal.

Ms. Haring stated that she was not asking for an exception for her project and she encouraged Council to follow the policy that has been in place for many years. She further alleged that pending litigation by someone who did not make the May 31 cut off was the reason behind this change and added that she does not have the political power to threaten a lawsuit; however, she would participate in any class action suit if this action financially harmed her.

Council Member Beckman stated that she has paid her fees like every other developer and questioned if that money paid for staff, to which Mr. Hatch stated that the application processing fee is applied toward staff support; however, the remainder of the fees is impact fees, none of which is applied toward personnel costs. Mr. Beckman expressed support for adhering to the current practice and working toward resolving this issue for future years. This delay has cost the development community a month and a half and he was in support of the applications being reviewed now.

City Attorney Schwabauer stated that to his knowledge no one has approached the City threatening a lawsuit if the filing period was not opened up. The issue is that previous staff changed the policy, for which it did not have the authority to do, and the matter is now before Council for a determination.

- Dennis Bennett agreed that the development community believed that May 31 was the cutoff date and a great deal of energy, effort, and money has been spent to comply with that date. The hybrid solution would be acceptable; although, he strongly urged that staff begin the application review process for completeness prior to the October 1 deadline so that any problems may be appropriately handled.

Council Member Hansen stated that he was not in favor of accepting more applications as it would greatly affect the staff workload.

Council Member Beckman believed that the threat of litigation was minimal as the information pertaining to the July 1 to October 1 deadline was not easy to locate on one's own.

Mr. Hatch stated that the resolution also establishes the point spread and priorities and is a readily available document that is used by engineers and applicants. Because of the discrepancy in dates, all applicants were informed of the issue and they chose to file to be consistent with the earliest date. He was unaware of any other potential projects.

- Ann Cerney questioned what month the annual accrual takes place.

Mr. Schwabauer responded that it is an annual allocation and accrues on January 1; however, it is not handed out until the process is completed.

Ms. Cerney stated that for a number of years the allocations were under-allocated. She questioned how many have accrued through 2006 and how many applications were requested by the seven developers as of May 31. Further, she requested information on when the impact fees are paid, where the fees go, and if money can be borrowed from the impact fees.

Mr. King responded that through 2005 there were a total of 3,830 allocations: 1,715 single-family; 343 medium density; and 1,672 high density. He indicated that it was difficult to determine the number of applicants because there are still 2005 submittals

that have not yet received allocations and the number would not be exact until the process is complete.

Mr. Hatch estimated 2,000 units for the FCB project, 1,000 for the Reynolds Ranch project, and 1,000 for the seven applications. Developers have no intention of putting large 1,000 unit developments on the market in a one-year period and would instead meter them out as the market would absorb, which would still allow for allocations for future projects of a smaller size. The impact fees are paid at building permit issuance and accounted for appropriately into the capital accounts.

- Jeffrey Kirst pointed out that, if the filing period remains open until October 1, the City would very likely receive further submittals.

MOTION #1:

Council Member Beckman made a motion to adopt a resolution to affirm the past practice of May 31 closing date for filing applications for residential allocations under the Lodi Growth Management ordinance, and further directed staff to begin processing the applications that were received by May 31 and to return to Council with an amended policy prior to next year. The motion **died** for lack of a second.

MOTION #2:

Council Member Mounce made a motion, Beckman second, to adopt Resolution No. 2006-141 affirming the May 31 closing date for filing applications for residential allocations under the Lodi Growth Management ordinance, thereby not accepting further applications, and directed staff to begin processing the applications that were received by May 31 and to return to Council with a restructured resolution prior to next year.

DISCUSSION:

Mayor Hitchcock stated that she would not support this motion as she was in favor of the hybrid option.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Johnson, and Mounce

Noes: Council Members – Hansen and Mayor Hitchcock

Absent: Council Members – None

RECESS

At 9:25 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 9:38 p.m.

K. REGULAR CALENDAR (Continued)

K-2 “Provide direction regarding scheduling and type of action the Council may take at informal informational meetings referred to as “Shirtsleeve” City Council meetings” was ***pulled from the agenda pursuant to staff’s request.***

K-3 “Review and discussion of current regulations pertaining to food vending vehicles”

With the aid of an overhead presentation (filed), Joseph Wood, Community Improvement Manager, provided an overview on the following:

Food vending vehicles

- Lunch wagons – 13 to 15 currently operate at permanent locations throughout Lodi.
- Push carts – 15 to 20 operate predominately on the east side.
- Produce sales – 5 to 10 locations from vehicles or front yards.

Itinerant Vendors

- 15 to 20 locations throughout Lodi that sell various merchandise including rugs, statuettes, flags, paintings, scarves, backpacks, and general craft work.
- 15 to 20 locations of flower and gift peddlers, which typically increases prior to Mother's Day and Valentine's Day along the streets, sidewalks, and at busy intersections.

The lunch wagon vendors create various nuisance issues including:

- Sanitation – the health code requires proper restroom facilities and food preparation.
- Hazardous electrical connections – many electrical hook ups are made from nearby light standards or buildings, which create a hazard for people walking or driving.
- Traffic and safety hazards – developed commercial sites are required to plan for traffic coming and going from the business.
- Conflicting uses – vendors often locate these commercial activities in a residentially zoned area, which detracts from the intended residential uses of the property. Complaints have been received about excessive gathering of people, noise, and traffic.
- Business license – many do not obtain the required business tax certificate and are not collecting the appropriate sales tax.

Currently, the existing zoning ordinance contains a regulation relating to enclosed building requirements, which states that business must be conducted within an enclosed building, with certain exceptions for car lots or service stations. This regulation would prohibit food vending vehicles. There are also zoning regulations dealing with parking, paving, drainage, and utilities. Additionally, Lodi Municipal Code Section 9.18 addresses vending from streets and sidewalks, which establishes restrictions on location (i.e. proximity to schools, intersections) and time spent in one location. The electrical code would address the electrical hazards and provide for permit requirements. Further, the San Joaquin County Environmental Health Department is available to respond to violations; however, there are scheduling issues that make it difficult to arrange for an immediate inspection of the violation. In this case, a coordinated joint inspection is typically arranged in order to address these issues. Staff is developing a new development code, which could contain language to deal specifically with itinerant vendor permits and regulate location, operations, design, and land use.

In 1999, the issue of revising Section 9.18 came before Council to cover vending from streets, sidewalks, and private property, which was subsequently not approved. This amendment would have provided a centralized enforcement tool for both Code Enforcement and the Police Department. Staff has been asked to do proactive enforcement and is looking for clarification from Council on whether the intention is to provide guidelines for these businesses to operate or to strictly prohibit them. Treated as a land use issue, the current zoning ordinance language would prohibit these operations, or the proposed development code could provide guidelines in allowing them to occur in a safe environment. Alternatively, Section 9.18 could be revised to provide regulation of vendor activities whether on private property or public right of way. The new administrative enforcement provisions would make enforcement much quicker and easier to resolve; however, the impact on the code enforcement priorities would diminish other enforcement efforts. Initial funding for this activity would be from the general fund; however, follow up, non-compliance, or abatement actions would be funded through cost recovery measures. Code enforcement is identified as an eligible activity under the Community Development Block Grant (CDBG) program for those locations within the low- to moderate-income target area, but the abatement portion would be ineligible.

Council Member Mounce stated that the City has the tools now to address this issue and questioned if it was a staffing issue that has prevented the enforcement, to which Mr. Wood responded that staff has not received clear direction in the past to prohibit this type of activity. When this matter was before Council in 1999, staff met with the vendors for input on formulating an ordinance that would address concerns regarding sanitation, traffic, and

health and safety, yet would still allow them to operate; however, it was not approved. Ms. Mounce was disappointed that this kind of activity is allowed to continue when there are regulations in place to address it.

Mayor Hitchcock recalled that Council direction in 1999 was for staff to return with an ordinance that would limit the amount of time in one location. She believed that the current regulations should be enforced as it was unfair to those businesses that pay for overhead, licensing, etc.

Mr. King stressed that it would be important for Council to articulate its current stand with regard to itinerant vendors in order for staff to have clear direction on the regulation and enforcement.

Mayor Pro Tempore Johnson questioned if the City could unilaterally ban legitimate food vending vehicles that have met its legal requirements (i.e. business tax certificate, county health certificate, does not violate time limits in one location, etc.), to which Mr. Schwabauer responded that he was researching the matter and would return to Council with an answer. Mr. Johnson expressed concern that there is presently an inadequate staffing level to enforce this and that creating a new ordinance would not change that situation; in fact, it would place an additional burden on the current priorities. He did not want to see legitimate food vendors prohibited; however, he was in favor of prohibiting itinerant vendors who sell flags, blankets, etc.

Mayor Hitchcock requested further information be provided to Council on how many cities use CDBG money to pay for enforcement, to which Mayor Pro Tempore Johnson expressed concern about further committing CDBG funds.

Council Member Beckman believed that legitimate food vendors would be allowed provided they remain in one location for no more than 20 minutes and he stated that would be the only type of itinerant licensing he would support; otherwise, all others should be banned. Council Member Mounce was not opposed to legitimately licensed vendors and supported the 20-minute time restriction. She requested that any joint coordinated enforcement effort with the health department include an entire street, not just the location in violation, to which Mr. Wood replied in the affirmative.

Mr. Wood stated that, if it is Council's intention to proceed under current language, these businesses would be prohibited from operating. Staff does not have an issue with lunch trucks that show up at a construction site, provide lunch, and then leaves to another location.

Council Member Hansen stressed that, if Council is going to debate this issue again, those affected need to be noticed in order to have an opportunity to participate and express their points of view. He believed that this has not been aggressively enforced due to the staffing level and the fact that there has not been clear direction in the past.

Council Member Mounce questioned how the operators would be noticed if they do not have a business license and are operating illegally in the City, to which Mr. Wood replied that staff would post notices at the known locations. He pointed out that not all of the locations are operating without business licenses or appropriate health permits. Mr. Hansen suggested it also be published in the Lodi News Sentinel.

PUBLIC COMMENTS:

- David Nielsen stated that those working in the food industry are required to obtain a food handling certificate and he wondered whether or not operators of food vending vehicles have them. He has witnessed gang activity, littering, urination, and other issues occurring at these locations and he was very concerned about their sanitation practices. He suggested that, if not banned entirely, these businesses be restricted to heavy industrial areas.

Council Member Mounce stated she would support any redesigned ordinance that would eliminate or remove mobile vendors from residential neighborhoods and expressed interest in pursuing the idea of limiting them to the industrial areas. She requested that the vendors on Cherokee Lane be addressed when this issue returns to Council.

Council Member Hansen stated that, if Council is going to revisit this issue, it should consider all itinerant vendors, not only lunch wagons.

Following discussion, Mr. Wood reiterated that enforcing current language would mean a strict ban on vendors. If Council preferred they operate under clear guidelines, then staff would return with a revised ordinance or proposed development code to address vending on private property and public right of way.

Community Development Director Hatch recounted that a similar ordinance was prepared in Ceres that banned itinerant vendors; however, issues arose regarding non-profit organizations selling items in front of grocery stores. In that case, an exception was carved out for non-profit organizations, which were required to obtain a staff administrative permit.

Council Member Mounce requested clarification if the current ordinance would allow for lunch trucks to stop for 20 minutes and then move along, to which Mr. Wood replied that staff would not apply this standard to vendors who temporarily set up; it would be applied to the vendors at permanent locations.

Mayor Hitchcock requested clarification if the current ordinance allows them on private property with no time limit as long as they meet state health guidelines. Mr. Wood stated that current zoning regulations state that business must be conducted in an enclosed building and enforcing that makes it a prohibition for the permanent locations. Staff has made note of these locations and letters have been prepared in the event Council chooses to move in this direction.

Mr. King stated that there are mobile businesses that are operating as a permanent business in clear violation of the code, and staff is suggesting that it begin enforcing those as zoning violations. This would include vendors that run electrical cords from the business, set up picnic tables, are located over parking stalls assigned to a particular business, etc. There are a variety of other issues and nuances that would require a certain amount of judgment among code enforcement. Staff will return to Council with the issues mentioned in relation to the zoning ordinance and will appropriately notify affected parties.

Mayor Hitchcock questioned if anyone on Council disagreed with this approach, to which Council Member Hansen replied in the affirmative.

Mayor Pro Tempore Johnson requested that the issue relating to mobile automobile dealerships be included in the discussion when it comes back before Council.

MOTION / VOTE:

There was no Council action taken on this matter.

- K-4 "Introduce ordinance amending Lodi Municipal Code Title 5 – Permits and Regulations – Chapter 5.40, "Adult-Oriented Businesses," by repealing and reenacting Section 5.40.020, "Location of Adult-Oriented Businesses," to add "Residentially-Zoned Property" to the list of land uses subject to distance regulations regarding the location of adult-oriented businesses; and repealing and reenacting Section 5.40.400(D)(1) to delete the requirement that employees of adult-oriented business be fingerprinted as part of the employee license process"

City Attorney Schwabauer reported that the proposed ordinance adds residentially-zoned properties to the list of properties that would be subject to distance regulations for adult-oriented businesses. In addition, the ordinance eliminates the requirement that employees of adult-oriented businesses must be fingerprinted, which was part of a settlement agreement that was inadvertently left in the ordinance.

MOTION:

Council Member Beckman made a motion, Mounce second, to introduce Ordinance No. 1781 amending Lodi Municipal Code Title 5 – Permits and Regulations – Chapter 5.40, “Adult-Oriented Businesses,” by repealing and reenacting Section 5.40.020, “Location of Adult-Oriented Businesses,” to add “Residentially-Zoned Property” to the list of land uses subject to distance regulations regarding the location of adult-oriented businesses; and repealing and reenacting Section 5.40.400(D)(1) to delete the requirement that employees of adult-oriented business be fingerprinted as part of the employee license process.

PUBLIC COMMENTS:

- Steve Jarrett questioned what the consequences would be if the fingerprint requirement were not deleted from the ordinance.

Mr. Schwabauer responded that the City would be in violation of the settlement agreement, which would obligate the City to pay for attorney fees associated with the litigation.

Mr. Jarrett stated that the previous City Attorney believed this ordinance was completely defensible when the issue of first amendment rights were raised; however, two years later it was challenged, and the City Attorney stated it was not defensible. He pointed out that there are stricter requirements to become a cab driver and a masseuse, yet employees of adult businesses have less stringent licensing requirements. He urged Council to not eliminate the fingerprint provision from the ordinance.

Mayor Hitchcock recalled that the City settled this matter, due to a Supreme Court ruling, in order to avoid steep legal fees and she was not in favor of fighting a suit the City would not win.

Council Member Hansen recalled that this suit cost the City \$100,000 in attorney fees.

Mr. Schwabauer explained that the type of dancing in adult-oriented businesses is a first amendment protected activity as expressive speech, as the other businesses pointed out are not.

VOTE:

The above motion carried by a unanimous vote.

- K-5 “Introduce ordinance amending Lodi Municipal Code Title 17 – Zoning – Chapter 17.39, “C-2 General Commercial District,” and Chapter 17.42, “C-M Commercial-Light Industrial District,” to add card rooms as a permitted use, with a use permit, in both the C-2 and C-M zoning districts”

City Attorney Schwabauer reported that this ordinance would require a conditional use permit for cardrooms and require that these businesses be located in either a C-2, General Commercial District, or C-M, Commercial-Light Industrial District.

MOTION / VOTE:

The City Council, on motion of Council Member Beckman, Hansen second, unanimously introduced Ordinance No. 1782 amending Lodi Municipal Code Title 17 – Zoning – Chapter 17.39, “C-2 General Commercial District,” and Chapter 17.42, “C-M Commercial-Light Industrial District,” to add card rooms as a permitted use, with a use permit, in both the C-2 and C-M zoning districts.

- K-6 "Adopt resolution approving a line of credit with Farmers and Merchants Bank for the Lodi Electric Utility (\$3,000,000)"

Deputy City Manager Krueger reminded Council that the Fitch rating agency recently expressed concern over the Electric Utility's thin level of liquidity, and this line of credit would work to avoid a negative rating action. The line of credit would only be used if absolutely needed, and staff does not anticipate using it. The maximum amount available is \$3 million, and the term expires on June 30, 2007. There are no fees for the line of credit; however, there are minimal costs for attorney fees for drawing up the agreement and resolution. The interest rate is short term and based upon use of the line of credit. The secured option would use a certificate of deposit (CD) as collateral, the rate for which is 1.35% above the interest rate on the earnings of the CD. The unsecured option would be 1.5% above the current London Inter-Bank Rate (LIBR). The City would only pay interest on the amount of the line of credit used.

Mayor Pro Tempore Johnson questioned why the City switched from using land as collateral to a CD when the City is cash poor. The conditions in the agreement state that the City is pledging all unrestricted revenues of the borrower including all taxes, income, revenue, cash received, and other monies of the borrower. If the City drops below a BBB-rating, the bank will terminate all advances and demand the outstanding balance of the line of credit to be paid immediately. This puts the City's limited cash in jeopardy.

Mr. Krueger replied that the City had two options regarding the use of the surplus property: 1) sell the property and infuse the cash into the Electric Utility, which is still an option, or 2) use the property as collateral. F&M Bank requested the City use an outside attorney to provide an opinion on this matter, which was that the City is prevented from using property as collateral due to the fact that this is a short-term loan. If there were a foreclosure on the loan, the disposal of the property would be encumbered, and it did not seem appropriate to do this particularly since the City does not intend to use the line of credit. The City could have pursued long-term borrowing; however, it would have paid interest from the inception of the loan. In regard to using cash, the City has an amount invested with the Local Agency Investment Fund (LAIF) at the State of California. If the City were to utilize the line of credit, it would move some of the money from the LAIF into the CD. Another option would be to loan funds to Electric Utility from other City funds; however, the downside is that the Fitch rating agency anticipates rating the other funds in the near future, and the inter-fund borrowing would not bode well.

Council Member Mounce expressed concern on apparent errors in the "blue sheet" presented by staff, which does not clearly reflect the interest rate, and she was concerned that the City could wind up paying a high rate.

In response to Mayor Hitchcock, Mr. Krueger stated that, if this action is not taken, the City may suffer a downgrade in its rating. If this were to happen, there are provisions in the various swap agreements that would require the City to pay back the dollar amounts over a short period of time. Additionally, the Northern California Power Agency would be affected as it relates to counterparties from which it purchases energy.

Mr. King added that the alternatives to the line of credit would be an immediate rate increase or long-term borrowing, which is not being recommended. The Fitch rating agency is expecting the City to have a line of credit by the first of the year.

PUBLIC COMMENTS:

- Kent Steinwert, President of F&M Bank, stated that this agreement was set up in a manner that was most advantageous for the City, which includes the two options of secured versus unsecured. If the City chooses to secure it, the bank would not require the CD to be deposited with the bank until the money is needed. He stated that the

structured costs are far less than it would be to go to the capital markets and there are no fees, with the exception of the legal fees for which the bank would be reimbursed.

In response to Council Member Hansen, Mr. Steinwert stated that the City would only pay interest if it borrowed the money. If the City went with the secured rate, it would be 1.35% above the rate being earned on the CD, which is a fixed and locked in rate. The unsecured rate would be 1.5% above the market rate, which could fluctuate and become more expensive over time.

- Ann Cerney questioned if there was data available on how much has been raised as a result of the utility rate increase and what affect it has had on the consumption rate. She believed there were no assurances that Fitch would not reduce the City's rating if this line of credit were established.

George Morrow, Electric Utility Director, stated that staff has been closely monitoring the revenues and tracking the projections. There was an increase in conservation efforts during the time the rate increase was discussed; however, since the rates were implemented, the Utility has hit its target almost every month. This action would show positive movement to the rating agency. Other positive factors include how the Utility performed during fiscal year end as it appears the cash projection will be higher than the anticipated \$1.7 million and the fact that it is in the black.

MOTION:

Mayor Pro Tempore Johnson made a motion, Hansen second, to adopt Resolution No. 2006-142 approving a line of credit with Farmers and Merchants Bank for the Lodi Electric Utility in the amount of \$3,000,000.

DISCUSSION:

Council Member Mounce stated that she would not support this motion due to the errors in the documentation. Mr. Krueger responded that the documentation would be corrected relating to Exhibits A and B and the interest rate language.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Johnson, and Mayor Hitchcock

Noes: Council Members – Mounce

Absent: Council Members – None

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Council Member Beckman, Hansen second, unanimously voted to hear only Item K-7 following the 11:00 p.m. hour.

RECESS

At 11:22 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 11:26 p.m.

K. REGULAR CALENDAR (Continued)

- K-7 "Adopt separate resolutions approving water supply assessment reports for Reynolds Ranch Project and Westside-Southwest Gateway Project"

Wally Sandelin, City Engineer, reported that this request is a requirement of SB 610 as the City of Lodi is the water agency serving the Reynolds Ranch and Westside-Southwest Gateway projects. The water supply assessment reports document that sufficient water supply is available to serve both projects; however, this action would not grant any entitlements to the project as that action would occur later in the process. The projects are accounted for in the 2005 Urban Water Management Plan adopted previously by Council.

The groundwater supply safe yield has been determined at 15,000 acre feet per year. There are supplemental safe yield components associated with the aerial spatial relationship of these projects to the underlying groundwater safe yield. In the existing community, the number is 2 acre feet per acre per year, and staff has assumed 1.7 acre feet per acre per year. The Woodbridge Irrigation District (WID) surface water supply is 6,000 acre feet and, through metering and other conservation measures, an additional 2,500 acre feet per year of conservation would be achieved. A total supply available to the City in the future, which would be a snapshot build out of all of the projects, is 24,600 acre feet per year. The existing demands of the City are 17,011 acre feet, and the projected demands of the Reynolds Ranch project and the Westside-Southwest Gateway project are 501 and 887 acre feet per year, respectively. There is a vacant land line item, which represents the demand that will be exerted on the groundwater supply through build out of the remaining land in the General Plan. That would include all of the land inside the General Plan area, north of Harney Lane; therefore, the total of future water supply requirement would be 19,800 acre feet per year, which results in a surplus of 4,800 acre feet per year. The data presented in the reports substantiate that there is sufficient water supplies to serve both projects, as well as some amount of future development, into the 20-year planning horizon.

In response to Mayor Hitchcock, Mr. Sandelin stated that SB 610 sets a planning horizon of 20 years into the future. The 6,000 acre feet per year purchased from WID is a 40-year contract and is allowed to be included. The City's commitment toward conservation and metering can be counted, as it is the Council's intention to complete a metering program within the next 20 years.

PUBLIC COMMENTS:

- Ann Cerney believed that the data did not support the recommendation. The development projects are significant and will continue out 20 to 30 years; however, the General Plan only looks out 10 to 15 years. The other issues of uncertainty are the 6,000 feet of WID water and the fact that the groundwater basin is not adjudicated.

In response to Council Member Hansen, Mr. Sandelin confirmed that there will be a secondary action by Council, which would deal with the implementation of bringing the water supply to the projects.

MOTION #1:

Council Member Hansen made a motion, Beckman second, to adopt Resolution No. 2006-143 approving Water Supply Assessment Report for Reynolds Ranch Project.

Council Member Mounce questioned who might challenge this document and how it could be overturned, to which Mr. Hatch answered that any challenge would be associated with the Environmental Impact Report (EIR) and development approvals for each of the projects. The action on the water supply assessment reports is required by state law as a precursor to approval of an EIR or development plan.

Mayor Hitchcock stated that she would be voting against this project as it is not currently in the General Plan.

Council Member Mounce believed the numbers did not substantiate the availability of water and stated that she would not support the reports.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, and Johnson

Noes: Council Members – Mounce and Mayor Hitchcock

Absent: Council Members – None

MOTION #2 / VOTE:

The City Council, on motion of Mayor Pro Tempore Johnson, Beckman second, adopted Resolution No. 2006-144 approving Water Supply Assessment Report for Westside-Southwest Gateway Project. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Johnson, and Mayor Hitchcock

Noes: Council Members – Mounce

Absent: Council Members – None

K-8 “Request City Council set date for joint City Council and Planning Commission kick-off meeting for General Plan update” was ***pulled from the agenda pursuant to the above vote.***

K-9 “Approve expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program Litigation and various other cases being handled by outside counsel (\$150,395.24)” was ***pulled from the agenda pursuant to the above vote.***

L. ORDINANCES

None.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:44 p.m.

ATTEST:

Jennifer M. Perrin
Interim City Clerk